

REMARKS

This amendment is in response to the Final Office Action mailed February 13, 2006. The undersigned attorney for the applicant believes that it responds to the Examiner's observations in that Action and in the telephone interviews between the Examiner and the applicant's attorney on March 27, April 4 and April 14, 2006. Applicant's attorney is very grateful for the Examiner's suggestions for eliminating the indefiniteness which he found in the initial language of claims 1 and 9 and for the opportunity to point out the language in the pending claims which distinguishes the applicant's invention from the disclosures of the Jacoby et al. reference that the Examiner had relied upon.

In the Office Action mailed 02/13/2006 the Examiner initially rejected claims 1 and 9 under §112 because he found inconsistency between the language of the preamble of each claim and certain portions of the body of each claim. He concluded that he should consider each claim as being drawn to a combination.

The revised claims 1 and 9 presented in this amendment are believed to remedy that situation. Specifically, the preamble of each claim has been reworded so that each one expressly calls for a combination. Thus, the elements recited in those combinations provide antecedents for later language in each claim which the Examiner previously found to be inconsistent, and therefore indefinite.

The Examiner also concluded that claims 1, 8 and 9 were anticipated under §102(b) by the patent to Jacoby et al. '229. However, that patent discloses side

portions of the “gusset plates” at the bottom portions of posts which are welded to the posts, i.e., at welds 49, and similar welds at the top edges of the “gusset plates” (see Jacoby et al. FIGS. 2, 3 and 5, for example, and see also columns 3 and 4, line 64 through line 4 of the written specification). Applicant’s claims clearly do not call for such a structure.

Applicant’s claim 1, for example, calls for the barrier to be “spaced away from all sides of the post providing a space between said barrier and the post” (lines 4-5) and “providing complete spacing of said barrier away from the post...” (line 8). Similarly, applicant’s claim 9 calls for the front and rear members of the protector to “provide complete spacing of the protector away from all sides of the post...” (lines 5-6).

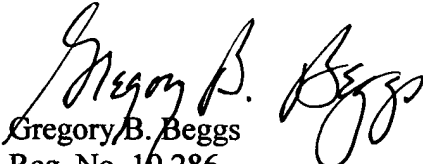
Applicant believes that these express words of the pending claims demonstrate an entirely different structure from that disclosed by the Jacoby et al. ‘229 patent.

During the telephone interviews referred to above the Examiner also referred to the Vargo ‘925 patent which he had relied upon in a prior Office Action. But as applicant has previously noted, the disclosure of the Vargo patent is of a device which is mounted on an elastic membrane so that the whole column of the deflector will be tipped into the post that it is designed to protect when the deflector is struck. The top edge of the deflector is lined with a cushion to soften the impact which it makes upon the post. The Vargo patent’s protector discloses no idea of the sides of the protector moving away from the post or creating space around the post to protect it. And it is hard to see

how any artisan might combine the Vargo disclosure with the Jacoby et al. disclosure, even if a reference were found to make some suggestion in that direction, in view of Jacoby et al.'s express showing of the top edges of the gusset plates being welded to the posts. Other bases of distinction can be made, but since there has been no rejection in this case combining Vargo with Jacoby et al., probably no further comment is needed at this point.

Again, applicant's attorney is grateful to the Examiner for the opportunity to discuss this case with him, particularly with respect to the §112 rejection which was not understood. It is believed that the claims are now in proper form, and that the references have been overcome as well. A favorable Office Action is requested.

Respectfully submitted,

  
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